

REMARKS

Claims 1-12 and 15-25 are pending in the present application. Reconsideration and withdrawal of the present rejections in view of the comments presented herein are respectfully requested.

Rejections under 35 U.S.C. § 103(a)

The rejection of claims 1-5, 7-20 and 23-25 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Fuglsang et al. (WO 02/19828 "R1"), in view of Collins et al. (J. Biol. Chem. 277:35133-35139, 2002 "R2") and Olesen et al. (US 6,110,508) was maintained. Applicants note that claims 13 and 14 were canceled in the preliminary amendment filed on March 10, 2005. Thus, this rejection should not include claims 13 and 14.

Collins et al. is the only reference which discloses family 8 xylanases. Enclosed herewith is a Declaration under *In re Katz* which shows that the subject matter of the Collins et al. reference is the work of the present inventors, and therefore does not qualify as prior art against the present claims. Since none of the other references teach or suggest family 8 xylanases, the rejection cannot be maintained.

The rejection of claims 5-6 and 21-22 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Fuglsang et al. (WO 02/19828 "R1"), in view of Collins et al. (J. Biol. Chem. 277:35133-35139, 2002 "R2"), Olesen et al. (US 6,110,508) and JP 2001-245665 (machine translation) was maintained.

In the Office Action at page 8, the Examiner alleges that JP 2001-245665 (JP '665) discloses a family 8 xylanase from *Bacillus halodurans*. Nowhere does this reference disclose that this is a member of the family 8 xylanases. As noted in the enclosed Rule 132 Declaration, the amino acid sequence of the xylanase disclosed in JP 2001-245665 was subjected to a BLAST analysis, and was determined to exhibit 100% sequence identity to another xylanase from *Bacillus halodurans*, and to a xylanase from *Bacillus firmus*; and 86% identity to a xylanase from *Paenibacillus* sp. DG-22, all of which are family 11 xylanases (Declaration, paragraph 5). Thus, the xylanase disclosed in JP 2001-245665 was found to be a family 11 xylanase and not to be a

Application No.: 10/527,387
Filing Date: October 17, 2005

family 8 xylanase. Since none of the cited references teach or suggest a family 8 xylanase, the rejection cannot be maintained.

In view of the comments presented above, Applicants respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. § 103(a)

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

CONCLUSION

Applicants submit that all claims are in condition for allowance. However, if minor matters remain, the Examiner is invited to contact the undersigned at the telephone number provided below..

Application No.: 10/527,387
Filing Date: October 17, 2005

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 8/12/09

By: 

Neil S. Bartfeld, Ph.D.
Registration No. 39,901
Agent of Record
Customer No. 20,995
(619) 235-8550

7601173
080609